

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

MARAH O. HEMPHILL,

Plaintiff,

-vs-

No. Civ. 10-0861 LH/RHS

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant.

**MEMORANDUM OPINION ORDER**

**THIS MATTER** comes before the Court on Defendant's Motion for Partial Summary Judgment to Limit Plaintiff's Damages to Those Occurring on or Before March of 2007 (Docket No. 53). The Court, having reviewed the Motion, the memoranda of the parties, and the applicable law, and otherwise being fully advised, finds that the Motion is not well taken and will be **denied**.

Defendant Liberty Mutual moves to restrict any damages Plaintiff may recover in this case to those occurring on or before March of 2007. The accident at issue in this case occurred on August 19, 2004. It is undisputed that Plaintiff was diagnosed with fibromyalgia in May 2010. Plaintiff's medical expert, Ben Daitz, M.D., opines that Plaintiff developed symptoms of myofascial pain after the accident, which then developed into fibromyalgia. Dr. Daitz also believes that the 2004 accident is 70% responsible for Plaintiff's fibromyalgia, with an intervening accident in 2007 being 30% responsible.

Defendant contends that any injuries allegedly caused by the accident in this case had resolved before March 2007, as allegedly testified to by Plaintiff at depositions on July 3, 2008, and

July 22, 2011. Defendant also asserts that Dr. Daitz's testimony regarding the length of time someone with myofascial pain might remain pain free supports this conclusion. Thus Defendant maintains that "what is more likely," is that Plaintiff's current symptoms were caused by her second accident, not the first.

Plaintiff opposes this Motion on grounds that there are genuine issues of material fact precluding summary judgment on this issue. The Court agrees. It is Plaintiff's burden to prove through medical causation testimony her damages that were caused by the August 19, 2004, accident. The Court declines to grant summary judgment on this issue at this time.

WHEREFORE,

**IT IS HEREBY ORDERED** that Defendant's Motion for Partial Summary Judgment to Limit Plaintiff's Damages to Those Occurring on or Before March of 2007 (Docket No. 53), is **DENIED**.

  
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SENIOR UNITED STATES DISTRICT JUDGE